

No. 13772.

IN THE  
**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

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C. N. PAPADAKIS, also known as GUS PAPADAKIS,  
*Appellant,*  
*vs.*

UNITED STATES OF AMERICA,  
*Appellee.*

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**BRIEF OF APPELLEE.**

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### I.

#### Jurisdiction.

C. N. Papadakis, also known as Gus Papadakis, appellant herein, was indicted under Section 145(b) of the Internal Revenue Code, United States Code, Title 26, Section 145(b).

The District Court had jurisdiction under Section 3231 of Title 18, United States Code. The offenses charged were committed in the Southern District of California. Judgment was entered on August 25, 1952, and Notice of Appeal was filed on the same date.

This Court has jurisdiction under Rule 37(a) of the Federal Rules of Criminal Procedure and Section 1291 of Title 28, United States Code.

## II.

### Statute Involved.

The Indictment in this case was brought under Section 145(b) of the Internal Revenue Code, United States Code, Title 26, Section 145(b), which provides in pertinent part:

“\* \* \* any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.”

## III.

### Statement of the Case.

On March 12, 1952, the Federal Grand Jury returned an Indictment in sixteen counts in the United States District Court for the Southern District of California wherein C. N. Papadakis, appellant herein, was named as a defendant in all sixteen counts. In Counts I to VIII, inclusive, appellant's father, Nick Papadakis, was charged as a co-defendant while appellant was charged alone in Counts IX to XVI, inclusive.

Count I of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return on behalf of Nick Papadakis for the calendar year 1945 wherein it was stated that the net income computed on a community property basis was \$16,580.33 and the tax owing thereon was \$5,722.56; whereas, the net income computed on a community property basis for the calendar year 1945 was \$43,495.15 and the tax owing thereon was \$23,096.50.



Count II of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return for the calendar year 1945 on behalf of Katina Papadakis, wife of Nick Papadakis and mother of appellant, wherein it was stated that the net income computed on a community property basis was \$16,580.33 and the tax owing thereon was \$5,722.56; whereas the net income computed on a community property basis for the calendar year 1945 was \$43,495.15 and the tax owing thereon was \$23,096.50.

Count III of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return for the calendar year 1947 on behalf of Nick Papadakis, wherein it was stated that the net income computed on a community property basis was \$4,817.44 and the tax owing thereon was \$876.40; whereas the net income computed on a community property basis for the calendar year 1947 was \$25,024.59 and the tax owing thereon was \$9,375.98.

Count IV of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return for the calendar year 1947 on behalf of Katina Papadakis, wife of Nick Papadakis and mother of appellant, wherein it was stated that the net income computed on a community property basis was \$4,817.44 and the tax owing thereon was \$876.40; whereas the net income computed on a community property basis for the calendar year 1947 was \$25,024.59 and the tax owing thereon was \$9,375.98.

Count V of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return for the calendar year 1948 on behalf of Nick Papadakis, wherein it was stated that the net income computed on a community property basis for said calendar year was \$6,429.06 and the amount of tax owing thereon was \$1,000.41, whereas the net income computed on a community property basis for the calendar year 1948 was \$31,574.53 and the tax owing thereon was \$11,817.94.

Count VI of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return for the calendar year 1948 on behalf of Katina Papadakis, wife of Nick Papadakis and mother of appellant, wherein it was stated that the net income computed on a community property basis was \$6,429.06 and the amount of tax owing thereon was \$1,000.41; whereas the net income computed on a community property basis for the calendar year 1948 was \$31,574.53 and the tax owing thereon was \$11,817.94.

Count VII of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return in behalf of Nick Papadakis for the calendar year 1949 wherein it was stated that the net income computed on a community property basis was \$9,586.53 and the tax owing thereon was \$1,820.45; whereas the net income computed on a community property basis for the calendar year 1949 was \$12,539.00 and the tax owing thereon was \$2,750.96.

Count VIII of the Indictment charged that C. N. Papadakis and Nick Papadakis evaded a large part of the income tax due and owing the United States by filing a false return for the calendar year 1949 on behalf of Katina Papadakis, wife of Nick Papadakis and mother of appellant, wherein it was stated that the net income computed on a community property basis was \$9,586.53 and the tax owing thereon was \$1,820.45; whereas the net income computed on a community property basis for the calendar year 1949 was \$12,539.01 and the tax owing thereon was \$2,750.96.

Count IX of the Indictment charged the appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United States by him by filing a false return for the calendar year 1946 on behalf of himself, wherein it was stated that the net income computed on a community property basis was \$4,038.95 and the tax owing thereon was \$510.00; whereas the net income computed on a community property basis for the calendar year 1946 was \$5,910.27 and the tax owing thereon was \$1,022.94.

Count X of the Indictment charged appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United States by his wife, by filing a false return for the calendar year 1946 on behalf of Helene Papadakis, wife of said C. N. Papadakis, wherein it was stated that the net income computed on a community property basis for the calendar year 1946 was \$4,038.95 and the tax owing thereon was \$615.00; whereas the net income computed on a community property basis for the calendar year 1946 was \$5,910.28 and the tax owing thereon was \$1,146.34.



Count XI of the Indictment charged appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United States by him, by filing a false return for the calendar year 1947 on behalf of himself, wherein it was stated that the net income computed on a community property basis for said calendar year was \$2,921.69 and the tax owing thereon was \$405.00; whereas the net income computed on a community property basis for the calendar year 1947 was \$7,330.84, and the tax owing thereon was \$1,528.79.

Count XII of the Indictment charged appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United States by his wife, by filing a false return for the calendar year 1947 on behalf of Helene Papadakis, wife of said C. N. Papadakis, wherein it was stated that the net income computed on a community property basis for the calendar year 1947 was \$2,921.69 and the tax owing thereon was \$308.00; whereas the net income computed on a community property basis for the calendar year 1947 was \$7,330.84, and the tax owing thereon was \$1,386.29.

Count XIII of the Indictment charged appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United State by him, by filing a false return for the calendar year 1948 on behalf of himself, wherein it was stated that the net income computed on a community property basis for said calendar year was \$4,584.85, and the tax owing thereon was \$510.00; whereas the net income computed on a community property basis for the calendar year 1948 was \$9,092.30, and the tax owing thereon was \$1,676.37.



Count XIV of the Indictment charged appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United States by his wife, by filing a false return for the calendar year 1948 on behalf of Helene Papadakis, wife of said C. N. Papadakis, wherein it was stated that the net income computed on a community property basis for the calendar year 1948 was \$4,584.85, and the tax owing thereon was \$510.00; whereas the net income computed on a community property basis for the calendar year 1948 was \$9,092.31, and the tax owing thereon was \$1,676.37.

Count XV of the Indictment charged appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United States by him, by filing a false return for the calendar year 1949 on behalf of himself, wherein it was stated that the net income computed on a community property basis for said calendar year was \$6,506.40, and the tax owing thereon was \$1,018.10; whereas the net income computed on a community property basis for the calendar year 1949 was \$8,795.64, and the tax owing thereon was \$1,598.05.

Count XVI of the Indictment charged appellant, C. N. Papadakis, alone with evading a large part of the income tax due and owing the United States by his wife, by filing a false return for the calendar year 1949 on behalf of Helene Papadakis, wife of said C. N. Papadakis, wherein it was stated that the net income computed on a community property basis for the calendar year 1949 was \$6,506.40, and the tax owing thereon was \$1,018.10, whereas the net income computed on a community property basis for the calendar year 1949 was \$8,795.63, and the tax owing thereon was \$1,598.05. [Clk. Tr. pp. 2-15.]

A Motion to Dismiss the Indictment was filed on April 2, 1952, and was denied on April 7, 1952. A Motion for Bill of Particulars was also filed on April 2, 1952, and granted on April 7, 1952. The Bill of Particulars was filed on April 10, 1952. [Clk. Tr. pp. 28-35.] Both C. N. Papadakis, appellant herein, and Nick Papadakis pleaded not guilty as to all counts applicable to them on April 7, 1952, and the case was set for jury trial on July 21, 1952, at which time trial began. At the close of the Government's case, on July 29, 1952, both defendants moved for judgment of acquittal and the motion as to each was denied on July 30, 1952. [Clk. Tr. p. 45.] On August 5, 1952, the jury returned a verdict of guilty as to all counts of the Indictment in which each defendant was charged, namely, Counts I to VIII, inclusive, as to both defendants and Counts I to XVI, inclusive, as to appellant C. N. Papadakis. [Clk. Tr. pp. 83-85.]

Motions for New Trial were filed as to each defendant and denied as to each. The judgment of the Court was that the defendant Nick Papadakis was fined the sum of \$1,000.00 on each of Counts I to VIII, inclusive, or a total of \$8,000.00, and that appellant C. N. Papadakis was sentenced to ten months' imprisonment as to each of the sixteen counts of the Indictment, to run concurrently, and to pay a fine of \$200.00 as to each of the sixteen counts, or a total fine of \$3,200.00. [Clk. Tr. pp. 88-89.]

An appeal to this Honorable Court was filed by the defendant, C. N. Papadakis, only.

IV.

**Statement of Facts.**

The Government relies upon the following facts:

Appellant C. N. Papadakis, more commonly known as Gus Papadakis, and therefore hereinafter in this brief referred to as Gus Papadakis, and Nick Papadakis are son and father, respectively. For many years Nick Papadakis was a resident of San Pedro, California, where he was engaged in various business enterprises [Rep. Tr. p. 494], and through the years he accumulated a substantial number of hotels and income producing real estate. [See Ex. 89—Net Worth Statement.]

During the years set forth in the Indictment, that is, 1945 through 1949, Nick Papadakis derived his income from the operation of the LaSalle Hotel and from real estate rentals. In 1947 one of his other sons, Ernest Papadakis, was taken in as a partner, and Nick Papadakis reported his income on a partnership basis for the years 1947 to 1949. [Exs. 29, 30, 31.] Ernest Papadakis did not contribute any capital to the partnership. During this same period, Nick Papadakis acquired other real estate in San Pedro in his own name. [Ex. 89.]

About 1940 the Papadakis family owned two retail package liquor stores. One of the stores was operated in the name of appellant, Gus Papadakis, and the other in the name of another son of Nick Papadakis, namely, George Papadakis. During World War II appellant and his brother George were in the military service, the liquor stores were operated by their father, Nick Papadakis. The income from the operation of the stores, however, was reported by appellant and his brother George. [Rep. Tr. p. 486.]



In the fall of 1945, appellant Gus Papadakis returned from military service, and the next year he and his brother George formed a partnership of the two liquor stores under the name of Anchor Liquors. By 1949 two other liquor stores were added. Appellant Gus and his brother George filed partnership returns for the Anchor Liquor Stores for the calendar years 1946 through 1948. [Exs. 25, 26, 27.] In 1949 two additional members of the Papadakis family were taken in as partners, and the income was so reported on that basis for the year 1949. [Rep. Tr. p. 485; Ex. 28.]

The Government did not question the validity of the partnership formed by Nick Papadakis and Ernest Papadakis for the LaSalle Hotel and rental properties; nor did it question the validity of the Anchor Liquor Stores partnership.

The books for the LaSalle Hotel and the rental properties, which made up the sole source of income for Nick Papadakis, were simple and incomplete. These books were kept by Nick Papadakis, his son Ernest, and by other members of the family.

The Anchor Liquor Stores books were equally simple and incomplete. Each store comprising the Anchor Liquor partnership kept its own set of books, one showing receipts and the other showing expenditures. However, the bulk of the merchandise for the Anchor Liquor Stores was purchased through and by the store located at 1227 South Pacific Boulevard which was under the direct management of appellant Gus Papadakis.

The income tax returns for the Papadakis family enterprise in the years prior to the calendar year of 1946 were prepared by an accountant, Paul Hoffman. Nick



Papadakis compiled the income and expenses figures for the various family enterprises, and consulted the accountant for the preparation of the various tax returns. [Rep. Tr. p. 455.]

After the discharge of appellant Gus Papadakis from military service in 1945, he took over the supervision and management of his father's affairs [Rep. Tr. p. 651], and in December of 1947 his father executed a general power-of-attorney to him. He assumed the responsibility of assembling the figures for all of the Papadakis family enterprises [Rep. Tr. p. 481] and consulted Paul Hoffman, the accountant, in regard to tax return preparation.

The income and expense figures for the LaSalle Hotel and rental properties were brought to the accountant on consolidated work sheets rather than a work sheet for each individual income producing unit. Likewise, the income and expense figures for all Anchor Liquor Stores were consolidated into one work sheet and were brought to the accountant. These work sheets for both the Nick Papadakis enterprises and for the Anchor Liquor Stores were prepared by appellant Gus Papadakis for the taxable years 1945 to 1949, inclusive.

The books of the various Papadakis family business enterprises were never audited by the accountant, nor were they ever seen or used by the accountant as a basis for the preparation of the tax returns. [Rep. Tr. p. 136.]

Leonard Mattis, the employee of Paul Hoffman, who for years had prepared the tax returns for the Papadakis family, met appellant Gus Papadakis for the first

time in the office of Paul Hoffman in March of 1948 relative to the preparation of the 1947 tax returns. [Rep. Tr. pp. 131-133.] A conference was held at that time at which Paul Hoffman, Leonard Mattis and appellant Gus Papadakis were present. Leonard Mattis was told that the gross receipts were cut from year to year and also that the inventory was juggled from year to year. Mattis stated that this was "risky, was it not," and he was told that they had been getting away with it for years. [Rep. Tr. p. 132.] Based upon the consolidated work sheets prepared and brought in by appellant Gus Papadakis, Mattis, under the instructions of appellant Gus Papadakis, prepared a tentative tax return showing the tentative tax liability of Nick Papadakis based upon income from the LaSalle Hotel and the rental properties, and for appellant Gus Papadakis based upon his income from the Anchor Liquor Stores. The tentative returns were then discussed with appellant, Gus Papadakis, only, and he usually said that the tax was too high and that cuts would have to be made. At the instruction of appellant, Gus Papadakis, the gross receipts would be cut in amounts desired by appellant, expenses would be increased, and major improvements would be charged off in one year as ordinary repair in order to decrease the net profit. [Rep. Tr. pp. 136-138, 142.]

In 1947, for the LaSalle Hotel the gross receipts were reduced by \$8,000.00 [Rep. Tr. p. 143]; the repair expenses were increased by \$4,000.00; supplies by \$4,000.00, and telephone expense by \$2,000.00.

In 1948, the LaSalle Hotel gross receipts were cut by \$10,000.00 [Rep. Tr. pp. 147-148, 159-160] and other expenses were increased by about \$2,000.00. [Ex. 69.]

For the year 1948, Leonard Mattis was asked by appellant Gus Papadakis to compute the tax savings to his father, Nick Papadakis, by not including in his return as income the rental income paid to Nick by the Anchor Liquor Stores. Gus at that time stated that he would collect from his father the additional tax that Anchor Liquors would have to pay by not claiming the rental payments as expenses on that return. The final result was that \$7,200.00 which was paid to Nick Papadakis in rental was left out of Nick's return as income and deleted as expense of the Anchor Liquor Stores. [Rep. Tr. p. 168.]

For the calendar year 1946, based upon work sheets made available to him, Mattis testified that purchases were increased by \$5,000.00 for the Anchor Liquors. [Rep. Tr. p. 155; Ex. 70.] For the year 1947, purchases were increased \$10,000.00 to \$15,000.00 to decrease the net profits. In 1948 purchases were increased by \$13,030.00 for Anchor Liquors, and other expenses were increased by \$1,970.00, or a total of \$15,000.00. [Ex. 71.]

For the year 1949, the closing inventory for Anchor Liquors was decreased by \$5,000.00 in order to reflect lower net profit. [Ex. 72.] This was done while the agents were still in the process of their investigation. This practice of cutting the gross receipts, increasing the purchases and expenses, and juggling the inventory, for both the Nick Papadakis enterprises and the Anchor Liquors for the years in question, were made at the direction and under the instructions of appellant Gus Papadakis, alone.

After the final returns were prepared by Leonard Mattis all returns for each member of the Papadakis family



were turned over to appellant Gus Papadakis. Gus then signed the returns of Nick and Katina Papadakis for the years 1945 through 1948; he signed the LaSalle Hotel partnership returns for the years 1947 and 1948; he signed the returns for his wife, Helene, for the years 1946, 1947, 1948 and 1949; and he signed the Anchor Liquors partnership returns for the years 1946, 1947, 1948 and 1949. [Rep. Tr. pp. 486-489.]

Agent Wilbur and Agent Vitello of the Bureau of Internal Revenue first entered upon investigation of this case in June, 1949. [Rep. Tr. p. 219.] Agent Wilbur first made an audit of the Anchor Liquor Stores' books. After the audit he discovered substantial discrepancies in purchases from that reported as purchases on tax returns for the years 1946, 1947 and 1948. [Rep. Tr. pp. 227 and 235.] These discrepancies were brought to the attention of appellant, Gus Papadakis, but Gus did not explain the discrepancies, and merely said there must be some reconciliation. The agents had all discussion relative to Anchor Liquors with appellant, Gus Papadakis.

On July 7, 1949, in the storeroom of the 1227 South Pacific Boulevard store, appellant, Gus Papadakis, offered a \$1,000.00 bribe, then a \$1,500.00 bribe to Agent Wilbur [Rep. Tr. pp. 237-238], which of course was refused, and Agent reported same to his superior.

The Agent then switched his investigation to the La-Salle Hotel, and from an audit of the books, he found that the rentals paid by Anchor Liquors in 1946, 1947 and 1948 did not appear on the books. The Agent then asked appellant, Gus Papadakis, why rentals for 1948 were not paid to his father, Nick Papadakis, and Gus



replied that the rent payment, if included, would throw his father's income into a higher bracket. [Rep. Tr. p. 244.] Further investigation of the books of the LaSalle Hotel and rental properties disclosed inaccuracy and failure to reflect a true picture of the income of Nick Papadakis. Accordingly, the Agents compiled a net worth statement, which was admitted to by Nick Papadakis in March, 1950. [Ex. 75.] A net worth statement for Nick and Katina Papadakis, introduced during the course of the trial as Exhibit 89 and substantially the same as Exhibit 75, reflects an increase in the net worth of Nick and Katina Papadakis from \$305,787.35 as of December 31, 1944, to \$504,020.47 at the end of the year 1949. Based upon said net worth statement, the unreported income of Nick and Katina Papadakis was computed as \$20,822.84 for the year 1945; \$42,949.12 for the year 1947; \$42,395.28 for the year 1948; and \$34,440.29 for the year 1949. [Ex. 88.]

During the period last above mentioned, Nick Papadakis admittedly purchased assets, the cost of which far exceed the income that he reported during the same period. His explanation was that he had about \$150,000.00 in cash at the time Roosevelt was inaugurated in 1933, which cash was kept in a metal box. This theory or explanation was maintained only until a Certified Public Accountant, namely, Martha O'Sullivan, was retained by the Papadakis family to prepare a net worth statement on behalf of Nick and Katina Papadakis. Miss O'Sullivan explained the increase in the assets of Nick and Katina Papadakis on the theory that Nick Papadakis borrowed \$120,000.00 [Ex. 34] from his sons during the period in question. [See Ex. 34.]

In addition to reliance upon the net worth method showing unreported income as to Nick Papadakis, the Government also proved direct items of unreported income. For example, there was complete omission of rents paid to Nick Papadakis by the Salvation Army [Ex. 37], and also of rents paid by check by Anchor Liquors [Ex. 78; Rep. Tr. pp. 283-284], and of rents paid by other tenants. [Rep. Tr. pp. 279-283; Ex. 77-B.]

The Agent further showed that after the first audit, which audit was made by Agent Wilbur, the rental receipt books for the LaSalle Hotel and rental properties were altered to reflect an increase in rent receipts over and above that which the Agents found upon their initial examination of the books. The evidence further showed that at the close of a conference in June, 1950, at the Federal Building, Nick Papadakis offered a \$10,000.00 bribe to Agent Vitello to settle his tax liability. [Rep. Tr. p. 501.]

Although the net worth and expenditure method was applied as to Nick Papadakis in determining unreported income, the direct item method was applied to prove unreported income of appellant, Gus Papadakis, as to Counts IX to XVI inclusive. This was determined by an independent examination and audit of the books and records of Anchor Liquors by Agent Wilbur. His examination and findings corroborated substantially the testimony given by Leonard Mattis, the accountant. Based on Agent Wilbur's analysis, found in Exhibit 82, it reflects that for the years 1946 through 1949, appellant Gus Papadakis and his wife, Helene, had additional income in the sum of \$26,248.05 more than that reported on the tax returns for those years.

## ARGUMENT.

### I.

#### The Evidence Against Nick Papadakis on the Net Worth and Expenditure Method and Other Matters Was Not Used Against the Appellant, C. N. (Gus) Papadakis.

As stated in this brief under the Statement of Facts, the Government relied upon the net worth and expenditures method to show unreported income as to Nick Papadakis as to Counts I to VIII inclusive. Exhibit 89 represented the Government's summary of the assets and liabilities that made up the net worth of Nick and Katina Papadakis. This summary was based upon evidence that had previously been admitted during the course of the trial, much of which was by stipulation. It was clear that this evidence was applicable as to Nick Papadakis only. [Rep. Tr. pp. 89, 93, 95-98.]

Exhibit 75 was a net worth statement prepared by Agent Wilbur in 1950 and signed by Nick Papadakis in March, 1950. This was introduced in evidence, and the Court properly ruled that it was to be received in evidence as to Nick Papadakis only. [Rep. Tr. p. 270.]

Exhibit 34 was a net worth statement prepared on behalf of Nick Papadakis and appellant, Gus Papadakis, by Certified Public Accountant Martha O'Sullivan. It was received in evidence. [Rep. Tr. p. 583.] It was clear that Exhibit 34 could have reference to Nick Papadakis only inasmuch as it was prepared for the purpose of explaining the increase in the net worth of Nick Papadakis during the years in question. Further, the Court in its instructions to the jury, clearly stated that the net worth statement on which the Government relied for its proof



of additional taxes due on the net worth method applied to Nick Papadakis only. [Tr. p. 1057.]

With reference to conversations had outside the presence of appellant Gus Papadakis, the Court, on this particular point, thoroughly instructed the jury that it was not to consider as evidence any statement that was made outside the presence of the defendant, Gus Papadakis, appellant herein. [Rep. Tr. p. 1064.]

## II.

### **The Evidence Was Sufficient Against Appellant, C. N. (Gus) Papadakis to Sustain a Conviction.**

Appellant offers no argument as to the sufficiency of the evidence against him as to the counts in the Indictment in which he alone is charged, namely, Counts IX to XVI inclusive. His argument that the evidence was insufficient as to him refers to Counts I to VIII inclusive, in which counts his father, Nick Papadakis, was charged as a principal defendant. The Government's theory with reference to Counts I to VIII inclusive is that appellant was an aider and abettor in the commission of the crimes by Nick Papadakis. The question, therefore, is whether or not the evidence sustains the Government's theory that appellant, Gus Papadakis, aided and abetted his father in the evasion of income taxes for the years 1945, 1947, 1948 and 1949.

The evidence, briefly summarized, showed that appellant Gus Papadakis knew of the scheme by his father to defraud the Government of income taxes [Tr. p. 132];



also that he assumed the responsibility of perpetuating that scheme. It is clear that for the taxable years charged in the Indictment, appellant even promoted the scheme. After his return from military service in the fall of 1945, he assumed full responsibility in the supervision and management of his father's business. [Rep. Tr. p. 651.] He held a general power-of-attorney from his father, which was executed in December of 1947. He assumed the responsibility of gathering income tax data for his father's business enterprises and also for the business enterprises of other members of the Papadakis family, and with this tax data he consulted the accountants and alone directed the preparation of the tax returns by the accountants. After the tax returns for the various members of the Papadakis family had been prepared, appellant, in many instances, signed the returns for each member of the family. He admitted that he analyzed the tax returns for his father and other members of his family. [Rep. Tr. pp. 652-653.]

It is significant that the Government proved the tax evasion for the year 1949 as to both Nick Papadakis and appellant. The returns for 1949 are due on or before March 15, 1950. Appellant's practice in causing false and fraudulent tax returns in the years prior to the calendar year 1949 continued with the 1949 returns and also during part of the year 1950, in spite of the fact that the Agents of the Bureau of Internal Revenue began their investigation in June of 1949. After the Agents had found discrepancies between the books of the various

business enterprises and the tax returns, and had confronted appellant Gus Papadakis with these discrepancies, appellant attempted to dispose of the matter by offering a bribe to Agent Wilbur. Appellant was present at all or most of the conferences which the Agents had with Nick Papadakis. Furthermore, he was consulted by Martha O'Sullivan, accountant later retained for the Papadakis family, with reference to the preparation of the net worth statement for Nick and Katina Papadakis.

It is clear that the evidence is sufficient to sustain the conviction of appellant on the theory of aiding and abetting as to Counts I to VIII inclusive.

This Court has repeatedly stated that it will indulge in all reasonable presumptions in supporting the ruling of the trial court and will consider the evidence in the light most favorable to the prosecution.

*Henderson v. United States* (C. A. 9), 143 F. 2d 681;

*Pasadena Research Laboratories v. United States* (C. A. 9), 169 F. 2d 375, cert. den., 335 U. S. 853;

*Norwitt v. United States* (C. A. 9), 195 F. 2d 127;

*Barcott v. United States* (C. A. 9), 169 F. 2d 929.

In the last above cited case, *Barcott v. United States*, *supra*, a tax evasion case, the Court said: "In determining whether substantial evidence exists to sustain the verdict, we must view it in the light most favorable to the government."

III.

**The Court Did Not Err in Failing to Instruct the Jury on the Subject of Entrapment and the Duty of Each Individual Juror.**

There is no merit to appellant's argument that the Court erred in failing to instruct the jury on the subject of entrapment. No evidence was adduced to show entrapment, nor did appellant's counsel predicate the defense in the trial court on the ground of entrapment. The evidence was clear that the criminal design to evade income taxes originated not in the minds of the Government Agents, or in the mind of Leonard Mattis, the accountant who informed the Government, in October of 1948, of the Papadakis tax evasions, but in the mind of appellant. And not only did this criminal design to evade taxes originate in the mind of appellant, but it was perpetuated by appellant, and the evidence so showed. Leonard Mattis first worked on the 1947 calendar year tax returns. He wrote a letter to the Bureau of Internal Revenue in October of 1948, and the Government did not begin its investigation until June of 1949. There was absolutely no evidence of entrapment, and therefore, the Court properly refused the instruction with reference to entrapment.

*Sorrell v. United States*, 287 U. S. 435.

There is no merit to the argument that the Court erred in refusing to instruct the jury on the subject of an accomplice relative to Leonard Mattis, the accountant. There was no evidence that Leonard Mattis promoted,

in any way, the scheme to defraud the Government of taxes, or that he made the scheme his own, or that he had any interest in defrauding the Government. He was paid a reasonable fee for his services as an accountant, in computing the taxes due and in preparing the final returns for the Papadakis family, and he gained nothing by the false and fraudulent practices carried out by appellant. Further, the evidence clearly showed that Mattis prepared the returns at the sole direction and under the sole instruction of appellant, Gus Papadakis.

### Conclusion.

For the reasons stated, it is respectfully submitted that the judgment of conviction entered by the District Court should be affirmed.

Respectfully submitted,

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